



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: New York Daily News
File: B-226248
Date: May 13, 1987

DIGEST

Recruitment advertisement was published in New York Daily News based on a procurement request signed by an Environmental Protection Agency (EPA) Assistant Regional Administrator. Authority to approve publication under 44 U.S.C. § 3702 had been delegated to regional contracting officers. Since delegation under the statute is legally permissible, and since there was prior written authorization, albeit by the wrong person, EPA may ratify the action.

DECISION

The Chief of the Quality Assurance Section, Procurement and Contracts Management Division, Environmental Protection Agency (EPA), has asked whether, in view of 44 U.S.C. § 3702, EPA can ratify a contractual commitment made by the wrong person to publish an advertisement in a newspaper.

Section 3702 of title 44, United States Code, provides that:

"Advertisements, notices, or proposals for an executive department of the Government, or for a bureau or office connected with it, may not be published in a newspaper except under written authority from the head of the department; and a bill for advertising or publication may not be paid unless there is presented with the bill a copy of the written authority."

Section 1501.670-7 of title 48, Code of Federal Regulations, part of EPA's Acquisition Regulations, provides that:

"EPA is not authorized to ratify improperly ordered paid advertisements. Therefore, the cognizant paying office shall return to the Contractor all voucher claims not accompanied by a written prior authorization. If there was not prior authorization, the paying office shall

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instruct the Contractor to present its claim directly to the General Accounting Office * * *."

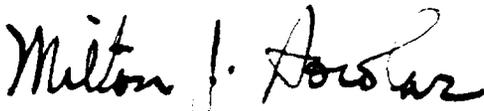
Within EPA, through a series of delegations and redelegations, the authority to approve the publication of newspaper advertisements resides in specified contracting officers at EPA regional offices.

In early January 1987, officials at EPA's Region II determined that there was a need to publish a recruitment advertisement in an effort to meet hiring goals. The New York Daily News was selected because it has the largest circulation in the region and because it was scheduled to run a special careers section in its Sunday edition for January 11.

On January 9, the regional office prepared a procurement request, which was signed by the Assistant Regional Administrator. The office then prepared the ad copy, sent it to the newspaper, and forwarded the necessary documents to the contracting officer at the region's small purchase operation. The contracting officer is one of the officials authorized to approve publication under the EPA delegations. However, he did not receive the documents until January 13. Thus, the advertisement was published on the basis of a commitment by an official who lacked the authority to make that commitment.

EPA has prepared a Determination and Findings in which it is specified that (1) the ad was necessary; (2) the ad price was the newspaper's standard commercial price; (3) EPA received benefit from the publication; and (4) the contracting officer would have approved the request had it reached him on time.

Given our longstanding view that 44 U.S.C. § 3702, regardless of its initial purpose, is an anachronism today (e.g., B-181337, November 25, 1974), and given the favorable responses by Congress to our recommendations for legislative relief in specific cases (e.g., Priv. L. No. 97-21, 96 Stat. 2620 (1982)), we conclude that payment may be made under the facts and circumstances of the instant case. In this connection, we think the EPA regulation cited above may be construed as applicable only in cases where there has been a total disregard of the statute, and is thus not a bar to payment by EPA in this or similar cases.



Acting Comptroller General
of the United States